

SUPERIOR COURT OF WASHINGTON FOR CLALLAM COUNTY

DAROLD STENSON,)	NO. 93-1-00039-1
)	
Petitioner,)	
)	MOTION FOR INDEPENDENT DNA
vs.)	TESTING OF EVIDENCE
)	
STATE OF WASHINGTON,)	
)	Noted for: October 17, 2008 at
Respondent.)	1:30 p.m.
)	
)	

Petitioner Darold Stenson, a death sentenced defendant, requests that this Court authorize independent DNA testing of the evidence that is in the State's possession or control that is related to the investigation or prosecution of Mr. Stenson.

On August 21, 2008, Mr. Stenson moved this Court for an order for DNA testing of enumerated items pursuant to RCW 10.73.170, the Fifth, Eighth and Fourteenth Amendments to the United States Constitution, and Article 1, sections 3 and 14 of the Washington State Constitution. RCW 10.73.170(5) states, "DNA testing ordered under this section shall be performed by the Washington state patrol crime laboratory."

1 Despite this provision, this Court should invoke its powers pursuant to RCW
2 2.28.150 and allow for independent DNA testing. RCW 2.28.150 provides, “When
3 jurisdiction is, by the Constitution of this state, or by statute, conferred on a court or
4 judicial officer all the means to carry it into effect are also given; and in the exercise of
5 the jurisdiction, if the course of proceeding is not specifically pointed out by statute, any
6 suitable process or mode of proceeding may be adopted which may appear most
7 conformable to the spirit of the laws.”

8 In order to give effect to the DNA testing statute, and to adequately protect Mr.
9 Stenson’s rights as guaranteed by the Fifth, Eighth and Fourteenth Amendments to the
10 United States Constitution, and Article 1, sections 3 and 14 of the Washington State
11 Constitution, this Court should allow for independent testing. Independent testing is
12 necessary because the Washington state patrol crime laboratory is ill-equipped to
13 conduct the cutting-edge testing that will be of use in this case. As detailed in Mr.
14 Stenson’s Motion for DNA Testing, miniature short tandem repeat or Mini-STR testing
15 was developed in 2007. It is this method of testing which will be able to show that
16 someone other than Mr. Stenson was on the property and the likely perpetrator of the
17 murders.

18 Mr. Stenson is not asking for this Court to pay for the independent testing, but is
19 simply asking that the Court allow for the independent testing to occur, at defense’s
20 expense.

21 Because Mini-STR testing is of particular use here, where the evidence is old and
22 may not have been well preserved to conduct DNA testing at this point, and because this
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1 independent testing will occur at no cost to the State or the Court, this Court should
2 invoke its powers to allow for independent testing.

3 DATED this 3rd day of October, 2008.

4 Respectfully submitted,

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6 _____
7 Robert H. Gombiner
8 Attorney for Darold Stenson

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10 _____
11 Sheryl Gordon McCloud
12 Attorney for Darold Stenson

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